

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON

MERTON GERALD BEAN,

Case No. 3:22-cv-00014-MC

Plaintiff,

ORDER

v.

OFFICER ISSAH DUARTE,

Defendant.

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MCSHANE, District Judge.

Plaintiff, an inmate at the Eastern Oregon Correctional Institution, filed this action pursuant to 42 U.S.C. § 1983 and alleged that defendant Officer Duarte used excessive force against him in violation of his Fourth Amendment rights.

Defendant now moves for dismissal of this action on grounds that plaintiff willfully refused to participate in his deposition after this Court issued an Order allowing plaintiff to be deposed. Alternatively, defendant moves for an Order compelling plaintiff's deposition testimony and his responses to discovery requests and awarding monetary sanctions. Defendant's motion is granted, in part.

Given plaintiff's pro se status, I will afford him another opportunity to comply with his discovery obligations before ordering dismissal or sanctions. *Ghazali v. Moran*, 46 F.3d 52, 54 (9th Cir. 1995) (noting that "pro se litigants are bound by the rules of procedure"). Plaintiff shall in good faith complete defendant's discovery requests, specifically defendant's Requests for Production, Interrogatories, and Requests for Admissions served on January 3, 2023. Further, plaintiff shall attend his noticed deposition and participate to the best of his ability.

Plaintiff is advised that the failure to comply with his discovery obligations, including those related to his deposition, will result in the dismissal of this proceeding, with prejudice. Plaintiff is further advised that he may be subject to monetary sanctions if defendant incurs additional costs to re-depose him and plaintiff fails to cooperate at the deposition.

#### CONCLUSION

Defendant's Motion to Dismiss or to Compel (ECF No. 21) is GRANTED, in part, and defendant's Motion to Stay (ECF No. 23) is DENIED as moot.

Within thirty days of this Order, plaintiff shall complete the discovery requests propounded by defendant. Further, plaintiff shall attend and cooperate at a future deposition noticed by defendant. Plaintiff is advised that the failure to comply with this Order shall result in the dismissal of this action, with prejudice, and may result in the imposition of monetary sanctions.

IT IS SO ORDERED.

DATED this 12th day of May, 2023.

s/ Michael J. McShane  
MICHAEL J. MCSHANE  
United States District Judge